IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE PIUS C.KURIAKOSE

MONDAY, THE 6TH AUGUST 2007 / 15TH SRAVANA 1929

WP(C).No. 2812 of 2005(I)

AS.50/2000 of PRL.SUB COURT,IRINJALAKUDA
O.S.NO.895/99 OF THE PRINCIPAL MUNSIFF, IRINJALAKUDA

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PETITIONER:

HARIDAS, S/O. KOLASSERIL SEKHARAN
CHAIPANKUZHI DESOM, KUTTICHIRA VILLAGE,
MUKUNDAPURAM TALUK.

BY ADV. SRI.RENJITH THAMPAN

RESPONDENT:

SARASWATHY VASU, W/O. THOPPIL VASU,
VEERAMCHIRA DESOM, KUTTICHIRA VILLAGE,
MUKUNDAPURAM TALUK.

BY ADV. SRI.T.N.MANOJ

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 06/08/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX(WPC 2812/05)

PETITIONER'S EXTS.:

EXT.P1: TRUE COPY OF THE JUDGMENT OF THE PRINCIPAL MUNSIFF COURT, IRINJALAKUDA IN O.S.NO.895/99.

EXT.P2: TRUE COPY OF THE JUDGMENT OF THE SUB COURT, IRINJALAKUDA IN A.S.NO.50/00.

PIUS C. KURIAKOSE,J.

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W.P.(C) No.2812 of 2005

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Dated: 6th August, 2007

JUDGMENT

Challenging Ext.P2 judgment passed by the lower appellate court, the plaintiff in O.S.No.895/99 on the files of the Principal Munsiff's Court, Irinjalakuda has filed this Writ Petition under Article 227 of the Constitution. The suit was filed by the plaintiff for recovery of a sum of Rs.12,000/- with interest at the rate of 12% per annum from 30.9.1996. The suit was based on borrowal of a sum of Rs.12,000/- by the defendant from the plaintiff on 30.9.1996 agreeing to repay the same with interest after executing a promissory note in favour of the plaintiff. The defendant contended that the transaction averred in the plaint is untrue. According to the defendant, she borrowed only Rs.5,000/- agreeing to pay 6% interest to the plaintiff. The amount was not borrowed on the strength of any promissory note. But at the time of borrowal a white paper containing her signature was entrusted with the plaintiff. It is agreed in the written statement that the defendant is liable to pay the plaintiff Rs.5,000/-. The learned Munsiff formulated an issue as to whether the plaintiff is entitled for a decree as prayed for. The evidence consisted of oral testimonies of P.Ws.1, 2 and D.W.1 apart from

Exts.A1 to A4. Ext.A1 was the promissory note, Ext.A2 was copy of the lawyer notice, Ext.A3 was the postal receipt and Ext.A4 was the acknowledgement card. The learned Munsiff on a evaluation of the evidence decreed the suit was prayed for. But in appeal the lower appellate court after reappreciating the evidence found that the plaintiff has not discharged the burden of proving the execution of the promissory note and accordingly dismissed the suit. Assailing Ext.P2 and seeking restoration of Ext.P1, this Writ Petition has been filed by the plaintiff.

2. A detailed counter affidavit has been filed by the respondent-defendant repudiating the various grounds raised in the Writ Petition.

3. I have heard the submissions of Mr.Ranjith Thampan, learned counsel for the petitioner and Mr.T.N.Manoj, learned counsel for the respondent.

4. Civil cases are to be decided on preponderance of probability and it was applying that rule that the trial court passed Ext.P1, so submitted Mr.Ranjith Thampan. According to him, the lower appellate court was not at all justified in non-suiting the plaintiff and interfering with the findings entered by the trial court which had the advantage of seeing the witnesses and recording their evidence.

5. Mr.T.N.Manoj, learned counsel for the respondent would resisted all the submissions of Mr.Ranjith Thampan. He would place strong reliance on the judgment of this court in **Leela Mathew v. Krishnamoorthy** (2002(3) KLT 417) to argue that Writ Petition under Article 227 is not maintainable. Reminding me of the contours of the jurisdiction under Article 227, learned counsel relied on the judgment of the Supreme Court in **Essen Deinki v. Rajiv Kumar** [(2002) 8 S.C.C. 400]. For justifying the view of the lower appellate court regarding comparison of disputed signatures by the Presiding Officer himself, learned counsel relied on the judgment of K.A.Mohammed Shafi,J. in **Jyothis Kuries and Loans v. George Jose** (2003(3) KLT 1157).

6. Having appreciated the pleadings raised by the parties in this Writ Petition and the submissions addressed at the bar, I do not find reason for interfering with the view of the lower appellate court in Ext.P2 that the plaintiff-petitioner has not properly discharged his burden of proving the execution of the suit promissory note. In that view, the petitioner is not entitled for a restoration of Ext.P1 decree. At the same time, the courts below should have noticed that it has been very clearly admitted by the respondent-defendant that she had

borrowed a sum of Rs.5,000/- from the petitioner on the date of the promissory note. Considering that admission, the lower appellate court should have passed a decree for a sum of Rs.5,000/- with interest at the rate of 6% per annum. To that extent Ext.P2 is vitiated. Thus allowing the Writ Petition, I set aside Exts.P2 and P1 and substitute Ext.P1 by passing a decree in favour of the petitioner allowing recovery of a sum of Rs.5,000/- from the respondent with interest thereon at the rate of 6% per annum till date of actual payment from 30.9.2006. In the circumstances of the case, the parties were suffer their costs through out.

srd **PIUS C.KURIAKOSE, JUDGE**